

IP 03-0151-CR 1 H/F USA v Walton
Magistrate Kennard P. Foster

Signed on 05/02/2006

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 03-151-CR-01 (H/F)
)	
CLARENCE WALTON,)	
)	
Defendant.)	

A M E N D E D
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable David F. Hamilton, Judge, on April 5, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on March 31, 2006, and to submit to Judge Hamilton proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings regarding this matter were held on April 21, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Walton appeared in person and his appointed counsel, William Dazey, Office of the Indiana Federal Community Defender's Office. The government appeared by J. P. Hanlon, Assistant United States Attorney. U. S. Parole and Probation appeared by Tim Hardy, U. S. Parole and Probation Officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That William Dazey, Office of the Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Walton in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Walton and his counsel who informed the Court they had read and understood the specifications of violation charged herein and waived further reading thereof.

3. That Mr. Walton was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Walton would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Walton had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Walton had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Hamilton's designation entered on March 31, 2006.

7. Mr. Walton stated his readiness to waive the preliminary hearing. Mr. Walton then waived, in writing, the preliminary hearing and he was held to answer.

8. Mr. Walton, by counsel, entered *nolo contendere* as to Violation 1 and stipulated that he admitted the violations of specifications set forth in the Petition to Revoke Supervised Release as

to Violations 2 and 3 of his supervised release, as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed on March 31, 2006, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	While on supervised release, the defendant shall not commit another federal, state or local crime. The defendant shall not illegally possess a controlled substance.

On February 16, 2006, Special Agent Daniel Schmidt and Special Agent Sean Brady of the Drug Enforcement Administration (DEA), traveled to the residence of Clarence Walton, located at 8448 Hidden Lake Drive, Indianapolis, IN. The offender was present at the residence and allowed agents to enter. Once inside, the offender agreed to an interview with the agents. The offender was read his Miranda Warnings by SA Schmidt and signed a waiver of those rights.

The offender was questioned about his drug trafficking activities in Indianapolis and other areas. He advised that he met with an Hispanic subject named Armando "Mondo" in approximately November 2005. He believed that Armando lived in the Southwestern United States. The offender stated that around Christmas 2005, he met with Armando on the west side of Indianapolis, in the area of 38th and High School Road and took receipt of up to 75 pounds of marijuana. He paid \$7,000.00 down payment for the marijuana. The offender stated that he then distributed this marijuana in Indianapolis. He reported to agents that he sold the marijuana in multi-pound quantities and collected several thousand dollars. The offender further stated that he met Armando in January 2006 and paid approximately \$85-90,000 for the aforementioned marijuana. He reported to agents that he still owes Armando more money for the drugs.

According to agents from the DEA, on January 19, 2006, Armando was arrested in Kansas transporting 200 pounds of marijuana enroute to Indianapolis. Armando cooperated with law enforcement and advised that he was enroute to Indianapolis to meet with the offender. Armando had the offender's cellular telephone number and was able to positively identify the offender by his Indiana drivers license photo. A female arrested with Armando was released from the scene prior to Armando's attempted delivery. Armando told police he had previously delivered marijuana to the offender in Indianapolis.

Law Enforcement attempted to deliver the marijuana to the offender, but he would not answer his phone when Armando tried to call. The offender later admitted that a female called him soon after Armando was arrested and told him about the arrest. The offender told agents that he turned off his phone after that and changed his phone number the next day. According to agents, the offender had a phone number for Armando in his cellular phone at the time of the interview.

The offender was asked by agents if he would be willing to attempt another transaction with Armando. He agreed and said he would place a call to Armando to try to set up another load.

The offender contacted SA Schmidt on February 27, 2006, and advised that he no longer wished to cooperate and wished he had not made a statement. He wanted to recant his statement.

The investigation by DEA in Kansas and Indianapolis alleges that the offender had a drug trafficking relationship with Armando Ramirez and others. The offender's own post-Miranda admission corroborates evidence already obtained by DEA. According to DEA agents, the offender could not have fabricated his statement in such an accurate manner had he not participated in the facts brought forth by his investigation. SA Schmidt indicated that he will testify as to the above facts. At this time, no charges are anticipated to be filed against the offender.

2 **The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.**

On February 16, 2006, the offender was interviewed by agents from the DEA regarding alleged drug trafficking activities in the Indianapolis area. The offender failed to notify the probation officer within 72 hours of having contact with federal law enforcement officials. On March 16, 2006, during an office visit, the offender admitted having contact with federal law enforcement officials and not reporting that contact to the probation officer.

3 **The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.**

The offender has failed to secure gainful employment. He has been unemployed since December 16, 2005.

The Court placed Mr. Walton under oath and he stated he wished to enter *nolo contendere* as to violation numbered 1, which the Court accepted, and admitted the above violations numbered 2 and 3.

Counsel for the parties further stipulated the following:

- 1) Mr. Walton has a relevant criminal history category of II. *See*, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation was stipulated to by the parties to be a Grade A violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Walton is 15-18 months.
- 4) The parties agreed on the appropriate disposition of the case as follows:
The defendant be sentenced to a period of confinement of 15 months to the custody of the Attorney General, with no supervised release to follow.

The Court, having heard the admissions of the defendant, the stipulations and evidence submitted by the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **REVOKED** and Clarence Walton is sentenced to the custody of the Attorney General or his designee for a period of 15 months. After service of his sentence, the defendant shall not be subject to supervised release.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served with a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the

Magistrate Judge's proposed findings of facts and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Walton's supervised release and the sentence imposed of imprisonment of 15 months, in the custody of the Attorney General or his designee. There shall be no term of supervised release at the conclusion of Mr. Walton's term of incarceration. Service of Mr. Walton's term of imprisonment is to begin immediately.

The Magistrate Judge requests that Tim Hardy, U. S. Parole and Probation Officer, prepare for submission to the Honorable David F. Hamilton, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

IT IS SO RECOMMENDED this 2nd day of May, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

Distribution:

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